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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA

In re)	Case No. 10-60593-11
)	
BLACK BULL RUN DEVELOPMENT,)	
)	
Debtor.)	
)	

MOTION TO DISMISS OR CONVERT TO CHAPTER 7;
MEMORANDUM IN SUPPORT; AND NOTICE

The United States Trustee (“UST”), acting through counsel, respectfully moves the Court, pursuant to 11 U.S.C. § 1112(b), to dismiss this case or convert the same to chapter 7, whichever the Court deems to be in the best interests of creditors and the estate, on the following grounds:

1. Inability to Propose Feasible Plan. The debtor is out of money. It has no funds with which to continue its operations. Without a substantial cash infusion in the form of DIP financing, the debtor cannot sustain this case under chapter 11. The debtor’s efforts to secure such financing has failed due to its inability to offer OneWest Bank sufficient adequate protection under §§ 361 and 364. Efforts to obtain a consensual arrangement with the Bank have failed. The debtor is back to seeking to prime OneWest’s lien position behind new money, but the consideration offered to OneWest is inadequate. Essentially, the debtor has nothing of value to give OneWest. The UST was willing to allow the debtor time to negotiate something with OneWest following the Court’s order denying the debtor’s initial efforts to prime the Bank, but since that has failed, and since OneWest has decided its interests would be best protected following conversion to chapter 7, the debtor will not be able to propose a feasible plan. It was

1 clear during the initial hearing on this subject that essentially this boils down to a one creditor
2 case. Those creditors with priority over the Bank will get paid first, but then anything else
3 realized from the sale of the debtor's assets will all fall to OneWest. Therefore, if the Bank has
4 decided that it will assume less risk and will realize a greater potential recovery through
5 proceeding under chapter 7, § 1112(b) provides that its decision should be respected. From here
6 on out, it's all about the Bank's money and no one else's.

7 The listing of cause in § 1112(b)(4) is nonexclusive. Moreover, a movant is not required
8 to prove any particular element in the statutory list so long as it proves "cause" exists. In this
9 Circuit, the Court has discretion to consider alleged causes not specifically listed in § 1112(b).
10 *Se Wiersma v. O.H. Kruse Grain & Milling (In re Wiersma)*, 324 B.R. 92 (9th Cir. BAP 2005)
11 (holding the list of causes in § 1112(b) is nonexclusive and the bankruptcy court has broad
12 discretion in determining cause); *Chu v. Syntrol Biosearch, Inc.*, 253 B.R. 92, 95 (S.D.Cal.
13 2000) (same); and *Pioneer Liquidating Corp. v. United States Tr.* 248 B.R. 368, 375 (9th Cir.
14 BAP 2000) (holding that the enumerated causes in § 1111(b) are not exhaustive, and the court
15 will be able to consider other factors as they arise). The listing of items which can constitute
16 "cause" in § 1112(b) are "illustrative, not exhaustive." *In re 3 Ram Inc.*, 343 B.R. 113, 117
17 (Bankr. E.D.Pa. 2006); and *In re Jayo*, 2006 WL 2433251 (Bankr. D.Idaho 2006). A debtor's
18 inability to propose a feasible plan constitutes sufficient "cause" to order dismissal or conversion.
19 Without postpetition financing, the debtor cannot propose a feasible plan. The debtor has
20 nothing it can offer to OneWest Bank in the form of adequate protection, so it is not possible for
21 any new lender to "prime" the Bank's security position. This case cannot proceed further under
22 chapter 11.

23 **2. Absence of a Reasonable Likelihood of Rehabilitation.** For the reasons discussed
24 above - the debtor is broke and cannot provide sufficient adequate protection to existing secured
25 creditors in order to secure postpetition DIP financing from a new secured creditor - the debtor
26 has no likelihood of rehabilitation. The debtor's assets must be liquidated as quickly and
27 efficiently as possible. This can occur best under the supervision of a chapter 7 trustee, rather
28 than through the cumbersome mechanics of a chapter 11 plan and disclosure statement.

1 **3. Best Interests of Creditors.** Section 1112(b)(1) of the Bankruptcy Code provides
2 that conversion or dismissal of a chapter 11 case, once requested by a party in interest, **must** be
3 granted by the Court if the movant establishes cause, “absent unusual circumstances specifically
4 identified by the court that establish that the requested conversion or dismissal is not in the best
5 interests of creditors and the estate.” The UST submits that ample cause exists for the Court to
6 convert this case to chapter 7, and that it is in the best interests of creditors to have a chapter 7
7 trustee appointed to investigate the debtor’s prepetition transactions (for instance: the response
8 filed by Leachman Angus Ranch - Docket No. 80 - reveals that the day before this case was
9 commenced, the debtor recorded an “Abstract of Agreements Concerning Leachman House”
10 which should be examined as a possible preferential, or perhaps fraudulent, transaction; and the
11 thousands of dollars that were paid to the Crowley Fleck law firm on the eve of the bankruptcy
12 filing appears to be preferential, as well); and to ensure the timely and efficient liquidation of the
13 debtor’s assets so that creditors might be paid to the fullest extent possible. It is submitted that it
14 has become the debtor’s burden to come forward to establish “unusual circumstances... that
15 establish that the requested conversion... is not in the best interests of creditors and the estate.”
16 Without postpetition DIP financing, which appears impossible to obtain under the circumstances
17 of this case given the lack of any meaningful collateral which might be offered as adequate
18 protection, the best interests of creditors test can yield only one result: conversion to chapter 7.

19 The only reason that the debtor can articulate to keep this case in chapter 11 is to
20 maximize the recovery for OneWest Bank. As stated above, OneWest is essentially the only
21 creditor who will gain or lose from the future direction of this case. Those creditors ahead of the
22 Bank will remain ahead (unless the chapter 7 trustee finds grounds to challenge and avoid their
23 secured or priority claims), and those creditors behind OneWest will never receive a dime,
24 regardless of whether this case remains in chapter 11 or converts to chapter 7. And OneWest has
25 made its wishes clear. It has no doubt studied its options very carefully, weighing what’s best for
26 its own interests, and it has decided chapter 7 provides the best course to maximize and protect
27 its interests.

28 Conversion to chapter 7 appears to be a better direction than dismissal, because a chapter

7 trustee can sell the property of the estate free and clear of all claims and interests; competing claims can be sorted out after the fact by the Court; preferential or fraudulent transfers can quickly be identified and resolved by this Court; and the priorities of the parties in interest can be readily defined and determined by the Court. Having one judicial forum in which to resolve all of the remaining issues in the case can only inure to the great benefit of the debtor's creditors. And having a trustee with the powers provided to him by the Bankruptcy Code will only expedite the liquidation process and ensure the fairest repayment of creditors to the fullest extent possible.

WHEREFORE, the United States Trustee respectfully moves the Court for an Order, pursuant to § 1112(b), dismissing this case or converting it to a case under chapter 7 of the Bankruptcy Code, based upon what the Court determines to be in the best interests of creditors.

DATED this 11th day of June, 2010.

ROBERT D. MILLER JR.
United States Trustee

/s/ Neal G. Jensen
NEAL G. JENSEN
Attorney for United States Trustee

**NOTICE OF OPPORTUNITY TO RESPOND
AND REQUEST A HEARING**

If you object to the motion, you must file a written responsive pleading and request a hearing within fourteen (14) days of the date of the motion. The responding party shall schedule the hearing on the motion at least twenty-one (21) days after the date of the response and request for hearing and shall include in the caption of the responsive pleading in bold and conspicuous print the date, time and location of the hearing by inserting in the caption the following:

NOTICE OF HEARING

Date: _____

Time: _____

Location: _____

If no objections are timely filed, the Court may grant the relief requested as a failure to respond by any entity shall be deemed an admission that the relief requested should be granted.

DATED this 11th day of June, 2010.

/s/ Neal G. Jensen
NEAL G. JENSEN

CERTIFICATE OF MAILING

I, the undersigned, Neal G. Jensen, Assistant United States Trustee, do hereby certify under penalty of perjury that a copy of the within and foregoing Motion to Dismiss or Convert to Chapter 7; Memorandum in Support; and Notice, was sent by first class mail postage prepaid on the 11th day of June, 2010, at Great Falls, Montana, and directed to the following:

Jeffrey A. Ball
323 South Wallace
Bozeman, MT 59715

Stephen M. Barrett
Black Bull Run Development
P.O. Box 10969
Bozeman, MT 59718

/s/ Neal G. Jensen
NEAL G. JENSEN